

NOT FOR PUBLICATION-**FOR PUBLICATION**  
**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**  
**DIVISION OF ST. THOMAS AND ST. JOHN**

<b>DOMINO OIL, INC.,</b>	)	
	)	
Plaintiff,	)	Case No. 96-99
	)	
v.	)	
	)	
<b>PHOENIX ASSURANCE CO. OF NEW YORK,</b>	)	
	)	
Defendant.	)	
	)	

---

**APPEARANCES :**

**Lee Rohn**  
St. Croix  
*For the plaintiff,*

**Stephen Bruschi**  
**Henry Feuerzeig**  
St. Thomas  
*For the defendant.*

**MEMORANDUM**

Moore, C.J.

Pending before the Court is plaintiff's motion to reconsider the dismissal of its second amended complaint. Plaintiff complains of three issues: the finding that New York has the more significant contacts, that New York law governs, and the dismissal itself. The motion is based on a claim of error of law.

First, plaintiffs challenge that this Court applied anything other than the Virgin Islands choice of law standards is misplaced. It was precisely the Court's application of the choice of law provisions of the situs of the Court which led it

to the conclusion that New York's substantive law should apply. The Court correctly cited and relied upon the RESTATEMENT (SECOND) OF CONFLICTS § 188(2) to make this decision. However, plaintiff is correct in that application of section 193 puts further emphasis on the location of risk and swings the balance in favor of application of Virgin Islands law.

The St. Croix Division of this Court has dealt squarely with claims of bad faith. See *Justin v. Guardian Insurance Co.*, 670 F. Supp. 614 (D.V.I. 1987). Judge O'Brien pointed out that two types of claims are available in cases involving settlement of insurance disputes, breach of contract or the "tort for failure to settle a claim in good faith." *Id.* at 616 (quoting *Polito v. Continental Cas. Co.*, 689 F.2d 457, 461 (3d Cir. 1982)). The parties are directed to *Justin* for the elements of the claim. Notably absent is the requirement of pleading "'fraud,' 'a high degree of moral turpitude,' 'wanton dishonesty' and 'criminal indifference to civil obligation,' which is 'aimed at the public generally.'" *Rocanova v. Equitable Life Assurance*, 612 N.Y.S.2d 339, 342 (N.Y. 1994). Indeed, a further review of the New York case law indicates that the Court conflated the requirements for pleading a claim for punitive damages in a bad faith refusal to settle with the requirements of the refusal to settle suit generally. Therefore, the dismissal of the plaintiffs complaint

/s/            
Thomas K. Moore  
Chief Judge

NOT FOR PUBLICATION-**FOR UPLOAD**

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>DOMINO OIL, INC.,</b>	)	
	)	
Plaintiff,	)	Case No. 96-99
	)	
v.	)	
	)	
<b>PHOENIX ASSURANCE CO. OF NEW YORK,</b>	)	
	)	
Defendant.	)	
	)	

---

**ORDER**

For the reasons stated in the foregoing Memorandum, it is hereby

**ORDERED** that plaintiff's motion for reconsideration is **GRANTED**. The defendant's motion to dismiss is **DENIED IN PART**. Namely, the claim for punitive damages is **STRICKEN**, but the bad faith refusal to settle claim itself survives the motion.

**ENTERED this \_18th\_ day of August, 1998.**

**For the Court**

    /s/      
**Thomas K. Moore**  
**Chief Judge**

ATTEST:  
ORINN ARNOLD  
Clerk of the Court

By:           /s/            
Deputy Clerk  
cc: Hon. G.W. Barnard  
Mrs. Jackson  
Adam Farlow  
Ronald Belfon

Lee Rohn  
Stephen Brusch

W:\OPINIONS\RECENT\96CI099B